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**FEDERAL ELECTION COMMISSION**

999 E Street, N.W.  
Washington, D.C. 20463

2015 MAR 30 AM 11: 57

**SENSITIVE**

**FIRST GENERAL COUNSEL'S REPORT** CELA

MUR: 6861

DATE COMPLAINT FILED: August 8, 2014

DATE OF NOTIFICATION: August 12, 2014

LAST RESPONSE RECEIVED: October 13, 2014

DATE OF ACTIVATION: January 13, 2015

ELECTION CYCLE: 2014

EXPIRATION OF SOL: Earliest: July 18, 2019

Latest: November 7, 2019

**COMPLAINANT:**

Steve Cohen for Congress and Henry M. Turley,  
in his official capacity as treasurer  
John Marek, Campaign Manager for Steve Cohen

**RESPONDENTS:**

Marion Latroy Williams  
National Democratic Party of the U.S.A., Inc.  
Shelby County Democratic Club, Inc. d/b/a Shelby  
County Democratic Party, Inc.  
Memphis Democratic Club, Inc.  
International Communications Association

**RELEVANT STATUTES  
AND REGULATIONS:**

52 U.S.C. § 30101<sup>1</sup>  
52 U.S.C. § 30103(a)  
52 U.S.C. § 30104(a)-(c)  
52 U.S.C. § 30120  
52 U.S.C. § 30124  
11 C.F.R. § 100.22  
11 C.F.R. § 100.29  
11 C.F.R. § 100.111  
11 C.F.R. § 104.3  
11 C.F.R. § 104.4  
11 C.F.R. § 106.1(c)  
11 C.F.R. § 110.16

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<sup>1</sup> On September 1, 2014 at the Federal Election Campaign Act of 1971, as amended, (the "Act") was transferred from Title 2 to new Title 52 of the United States Code.

**INTERNAL REPORTS CHECKED:** Disclosure Reports

**FEDERAL AGENCIES CHECKED:** None

**I. INTRODUCTION**

The Complaint in this matter alleges that Marion Latroy Williams and several for-profit entities under his control, National Democratic Party of the U.S.A., Inc. ("NDP"), Shelby County Democratic Club, Inc. d/b/a Shelby County Democratic Party, Inc. ("SCDC"), Memphis Democratic Club, Inc. ("MDC"), and International Communications Association ("ICA") (collectively, "Respondents")<sup>2</sup> violated the Act during the primary election of 2014 in two ways. First, the Complaint alleges that the Respondents engaged in fraudulent misrepresentations when they produced and distributed campaign materials featuring federal candidates, which were designed to appear as if they were produced by the official national and local Democratic Party committees when in fact they were not. Second, the Complaint alleges that the Respondents failed to report expenditures or in-kind contributions associated with these advertisements to the Commission.<sup>3</sup>

<sup>2</sup> Steve Cohen for Congress and Henry M. Turley, in his official capacity as treasurer ("Cohen Committee"), is the authorized campaign committee of Congressman Steve Cohen who has represented Tennessee's 9th Congressional District for four terms before being reelected to a fifth term in November 2014.

Williams registered National Democratic Party of the USA, Inc. (2010), Shelby County Democratic Club, Inc. d/b/a Shelby County Democratic Party, Inc. (2010), and Memphis Democratic Club, Inc. (2010) as for-profit corporations with the State of Tennessee, and serves as the Registered Agent, President and CEO of each organization. Each of these corporations is currently listed as active and in good standing with the State of Tennessee. International Communications Association is not a registered organization. Williams appears to control and direct these organizations and use them interchangeably, sometimes including all of them in materials, publications and advertisements, and other times including only one or two of them. There is no information in the public record to indicate that any of these entities is an authorized state or local party committee.

<sup>3</sup> Compl. at 1; 52 U.S.C. § 30124 (formerly 2 U.S.C. § 441h). Ricky Wilkins was a Democratic candidate during the 2014 primary election; his authorized committee is Committee to Elect Ricky E Wilkins to Congress and Kimela Wright Cox, in her official capacity as treasurer ("Wilkins Committee").

1 Williams submitted the Respondents' answer to the allegations through a series of e-  
2 mails.<sup>4</sup> Williams denies the allegations and states that these corporations have steering  
3 committees that decide which candidates to endorse, and that funds for Respondents'  
4 publications and materials come from fees from state and local candidates and membership  
5 dues.<sup>5</sup> Williams specifically asserts that no federal candidates paid to be included in the SCDC  
6 sample ballots and other materials cited in the Complaint.<sup>6</sup> Williams finally states that the  
7 Respondent organizations have been making candidate endorsements for over 25 years and have  
8 endorsed Cohen in many of its past sample ballots and other materials.<sup>7</sup>

9 Based upon the present record, we recommend that the Commission find no reason to  
10 believe that the Respondents violated 52 U.S.C. § 30124 (formerly 2 U.S.C. § 441h).  
11 Nonetheless, the available information suggests that the Respondents failed to report these  
12 campaign materials as independent expenditures and that these communications lacked an  
13 adequate disclaimer. Accordingly, we recommend that the Commission find reason to believe  
14 that National Democratic Party of the USA, Inc., Shelby County Democratic Club, Inc. d/b/a  
15 Shelby County Democratic Party, Inc., Memphis Democratic Club, Inc. and International  
16 Communications Association violated 52 U.S.C. §§ 30104(c) and 30120 (formerly 2 U.S.C.  
17 §§ 434(c) and 441d).

<sup>4</sup> For convenience, we treat all of the e-mails — dated October 4, 2014 at 10:32 PM, 10:34 PM, 10:38 PM, and 10:43 PM; October 5, 2014 at 7:29 AM; October 6, 2014 at 12:32 PM; October 7, 2014 at 3:16 PM and 3:17 PM; October 9, 2014 at 10:31 PM, 10:35 PM, and 11:04 PM; October 11, 2014 at 11:05 PM, 11:12 PM, and 11:22 PM; and October 13, 2014 at 5:11 PM and 5:40 PM — collectively here as a single "Response."

<sup>5</sup> See Resp.

<sup>6</sup> *Id.* No federal candidates have reported disbursements to any of the Respondents. A review of the public records indicates Respondents have filed no disclosures of its receipts or disbursements with the State of Tennessee, and has not registered or filed disclosures with the Commission.

<sup>7</sup> The Respondents also provide materials to show that SCDC endorsed Wilkins during the August 7, 2014 primary election and that NDP endorsed Cohen during the 2014 general election. *Id.*

IV. FACTUAL AND LEGAL ANALYSIS

A. Fraudulent Misrepresentation

The Act and Commission regulations prohibit any person from fraudulently misrepresenting themselves as speaking for or on behalf of any candidate or political party or employee or agent thereof for the purpose of soliciting contributions or donations.<sup>8</sup> The Act also prohibits candidates and their employees or agents from fraudulently misrepresenting themselves, or any other organization under the candidate's control, as speaking or otherwise acting on behalf of any other candidate or political party on a matter which is damaging to such other candidate or party.<sup>9</sup>

Complainants allege that Respondents violated 52 U.S.C. § 30124(a) (formerly 2 U.S.C. § 441h(a)) by fraudulently misrepresenting themselves in a manner that was intentionally designed to convince the public that Respondents were speaking on behalf of official Democratic national and local party committees.<sup>10</sup> According to the Complaint, Respondents attempted to deceive or confuse the public by insinuating that Respondents' endorsements actually reflected the views of national and local Democratic Party.

To violate Section 30124, the alleged fraudulent misrepresentation must be made by a "candidate for Federal office" and must be done "on a matter which is damaging to such other

<sup>8</sup> 52 U.S.C. § 30124(b)(1) (formerly 2 U.S.C. § 441h(b)(1)); 11 C.F.R. § 110.16(b)(1). The term "candidate" means "an individual who seeks nomination for election, or election, to *Federal* office." 52 U.S.C. § 30101(2) (formerly 2 U.S.C. § 431(2)).

<sup>9</sup> 52 U.S.C. § 30124(a)(1) (formerly 2 U.S.C. § 441h(a)(1)); 11 C.F.R. § 110.16(a)(1). See Explanation and Justification for 11 C.F.R. § 110.16, Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 Fed. Reg. 76,962, 76,968 (Dec. 13, 2002) (noting that section 30124(b) (formerly section 441h(b)) "prohibits a person from fraudulently misrepresenting that the person is speaking, writing or otherwise acting for, or on behalf of, a Federal candidate or political party, or an employee or agent of either, for the purpose of soliciting contributions or donations."

<sup>10</sup> Compl. at 2.

1 candidate or political party," or must be done by a person misrepresenting that they are speaking,  
2 writing or otherwise acting on behalf of a political candidate or political party "for the purpose of  
3 soliciting contributions or donations."<sup>11</sup>

4 Here, the alleged communications, while potentially misleading to the public, do not  
5 constitute a misrepresentation of campaign authority as set forth in the Act. First, the conduct  
6 was undertaken by corporations, not a federal candidate, so the conduct does not satisfy the first  
7 part of the provision. Second, even if Respondents purported to act on behalf of a federal  
8 candidate or political party through their communications, they did not do so for the purpose of  
9 soliciting contributions or donations. Thus, the communications do not satisfy the requirements  
10 of the second part of the provision.<sup>12</sup>

11 Given that the contested communications do not appear to satisfy the elements of  
12 fraudulent misrepresentation of campaign authority as described in the Act, we recommend that  
13 the Commission find no reason to believe that National Democratic Party of the USA, Inc.,  
14 Shelby County Democratic Club, Inc. d/b/a Shelby County Democratic Party, Inc., Memphis  
15 Democratic Club, Inc., and International Communications Association violated 52 U.S.C.  
16 § 30124 (formerly 2 U.S.C. § 441h).

17 **B. Failure to Report Independent Expenditures**

18 The Act defines "expenditure" as "any purchase, payment, distribution, loan, advance,  
19 deposit, or gift of money or anything of value made by any person for the purpose of influencing

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<sup>11</sup> 52 U.S.C. § 30124(a)-(b) (formerly 2 U.S.C. § 441h(a)-(b)); *see* MUR 6837 (Lalley).

<sup>12</sup> No information before the Commission suggests that the Respondents acted on behalf of or as agents or employees of Wilkins, nor is agency or coordination between the Respondents and the Wilkins campaign alleged in the Complaint.

1 any election for Federal office.”<sup>13</sup> “Independent expenditures” are expenditures by a person  
2 expressly advocating the election or defeat of a clearly identified federal candidate that is not  
3 made in concert or cooperation with or at the request or suggestion of such candidate, the  
4 candidate’s authorized political committee, or their agents, or a political party committee or its  
5 agents.<sup>14</sup> Every person, other than a political committee, who makes independent expenditures  
6 over \$250 in a calendar year must disclose those expenditures in reports to the Commission.<sup>15</sup>

7 The available information indicates that the Respondents made independent expenditures  
8 during the 2014 primary and general elections when they produced and distributed materials  
9 including sample ballots, yard signs, flyers, mailers, and radio and television advertisements that  
10 endorsed federal candidates, including Wilkins and Cohen. Respondents failed to report these  
11 independent expenditures to the Commission, however, and the record indicates that the amount  
12 spent on each of these communications likely exceeded the \$250 reporting threshold. In fact,  
13 there is direct evidence that the Respondents exceeded the threshold with respect to their  
14 television advertisement,<sup>16</sup> and with respect to their other communications, Respondents  
15 represented to candidates receiving endorsements that the flyers and sample ballots would be  
16 sent to all registered voters in Memphis and Shelby Counties, an undertaking that likely  
17 exceeded \$250.<sup>17</sup>

<sup>13</sup> 52 U.S.C. §§ 30101(9)(A)(i) (formerly 2 U.S.C. § 431(9)(A)(i)); 11 C.F.R. § 100.111.

<sup>14</sup> 52 U.S.C. § 30101(17) (formerly 2 U.S.C. § 431(17)).

<sup>15</sup> *Id.* § 30104(c)(1), (b)(3)(A) (formerly 2 U.S.C. §§ 434(c)(1), (b)(3)(A)).

<sup>16</sup> The FCC’s public file for Memphis Fox Affiliate WHBQ indicates that SCDC spent at least \$400 for a one-minute advertisement that aired August 1, 2014 during the 11:00-11:30AM news program, which listed “Randy Wilkins” as its “Ad-ID.” *See* FCC Political Public File and Agreement between Fox 15 WHBQ and Shelby County Democratic Club, Inc. (July 29, 2014); *see also* Invoice from Fox 15 WHBQ to Shelby County Democratic Club, Inc. (Aug. 10, 2014).

<sup>17</sup> *See* Compl. at Attach. 1; *see also* Resp.

1 For these reasons, we recommend the Commission find reason to believe that National  
2 Democratic Party of the USA, Inc., Shelby County Democratic Club, Inc. d/b/a Shelby County  
3 Democratic Party, Inc., Memphis Democratic Club, Inc., and International Communications  
4 Association violated the Act's reporting requirements set forth in 52 U.S.C. § 30104(c) (formerly  
5 2 U.S.C. § 434(c)). Moreover, an investigation will be necessary to determine the amount the  
6 Respondents may have spent on the independent expenditures at issue, as described further  
7 below.<sup>18</sup>

8 **C. Inadequate Disclaimer**

9 The Act requires disclaimers identifying the person that paid for any public  
10 communication made by any person that contains express advocacy, solicits a contribution, or  
11 qualifies as an "electioneering communication" under 11 C.F.R. § 100.29.<sup>19</sup> The disclaimer must  
12 be "presented in a clear and conspicuous manner, to give the reader, observer, or listener  
13 adequate notice of the identity of the person or political committee that paid for, and where  
14 required, that authorized the communication."<sup>20</sup> If a communication is paid for by a person or  
15 entity other than a candidate's authorized committee, the communication must clearly state that it  
16 has been paid for by such other persons and authorized by the candidate's authorized  
17 political committee.<sup>21</sup> If a communication is not authorized by candidate's authorized  
18 committee, it must clearly state the name and permanent address, telephone number or World

<sup>18</sup> The independent expenditures at issue may have exceeded \$1,000 in value, which could trigger the statutory threshold for "political committee" status. See 52 U.S.C. § 30103(a) (formerly 2 U.S.C. § 433(a)). We will make any further recommendations that may be warranted following the completion of our proposed investigation.

<sup>19</sup> 52 U.S.C. § 30104(b)(6)(B)(iii) (formerly 2 U.S.C. § 434(b)(6)(B)(iii)); 11 C.F.R. §§ 104.3(b)(3)(vii), 104.4(a).

<sup>20</sup> 52 U.S.C. § 30120 (formerly 2 U.S.C. § 441d); 11 C.F.R. § 110.11(a)-(c).

<sup>21</sup> *Id.*

1 Wide Web address of the person who paid for the communication and state that the  
2 communication is not authorized by any candidate or candidate's committee.<sup>22</sup> For printed  
3 communications, disclaimers must be clear and conspicuous, be of sufficient type size to be  
4 clearly readable, be contained in a printed box set apart from the other contents of the  
5 communication, and must clearly state who paid for the communication.<sup>23</sup>

6 Based on information provided in the Complaint and Response, it appears that the  
7 Respondents posted billboards, yard signs, flyers, advertisements, and radio and television  
8 advertisements to the general public in and around Shelby County that endorsed federal  
9 candidates during the 2014 primary and general elections. These communications and  
10 advertisements expressly advocated the election of clearly identified federal candidates and  
11 therefore qualified as public communications that required proper disclaimers.<sup>24</sup> The relevant  
12 communications lacked appropriate disclaimers, however, as they failed to clearly state the  
13 name, permanent address, telephone number, or World Wide Web address of the person or entity  
14 who paid for the communication, or state whether the communications were authorized by any  
15 candidate or candidate's committee; nor did the printed materials comply with the specifically  
16 enumerated size, type, and font requirements set forth in the regulations.<sup>25</sup>

17 Accordingly, we recommend that the Commission find reason to believe that Marion  
18 Latroy Williams and National Democratic Party of the USA, Inc., Shelby County Democratic  
19 Club, Inc. d/b/a Shelby County Democratic Party, Inc., Memphis Democratic Club, Inc., and

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<sup>22</sup> *Id.*

<sup>23</sup> See 11 C.F.R. § 110.11(c)(2), (d)(1)(ii).

<sup>24</sup> 52 U.S.C. § 30120 (formerly 2 U.S.C. § 441d); 11 C.F.R. § 100.26.

<sup>25</sup> See Resp.



1 International Communications Association violated 52 U.S.C. § 30120 (formerly 2 U.S.C.  
2 § 441d) by failing to include proper disclaimers in their public endorsement communications and  
3 advertisements.

### 4 **III. PROPOSED INVESTIGATION**

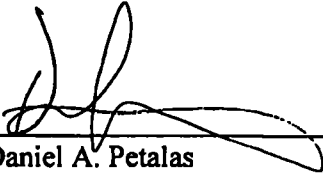
5 This matter will require a brief investigation to obtain additional information about the  
6 cost of the relevant independent expenditures that should have been disclosed in reports to the  
7 Commission before the Commission can reasonably determine the scope and nature of the  
8 violations at issue and an appropriate basis for potentially conciliating the matter. We anticipate  
9 proceeding informally with Respondents, but recommend that the Commission authorize the use  
10 of compulsory process, as necessary.


### 11 **IV. RECOMMENDATIONS:**

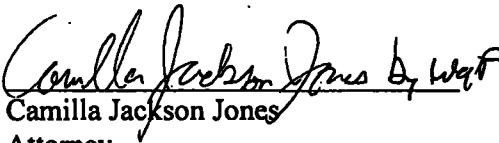
- 12 1. Find no reason to believe that National Democratic Party of the USA, Inc., Shelby  
13 County Democratic Club, Inc. d/b/a Shelby County Democratic Party, Inc.,  
14 Memphis Democratic Club, Inc., and International Communications Association  
15 violated 52 U.S.C. § 30124 (formerly 2 U.S.C. § 441h) by fraudulently  
16 misrepresenting campaign authority;  
17
- 18 2. Find reason to believe that National Democratic Party of the USA, Inc., Shelby  
19 County Democratic Club, Inc. d/b/a Shelby County Democratic Party, Inc.,  
20 Memphis Democratic Club, Inc., and International Communications Association  
21 violated the registration and reporting requirements set forth in 52 U.S.C.  
22 § 30104(c) (formerly 2 U.S.C. § 434(c));  
23
- 24 3. Find reason to believe that Marion Latroy Williams and National Democratic  
25 Party of the USA, Inc., Shelby County Democratic Club, Inc. d/b/a Shelby  
26 County Democratic Party, Inc., Memphis Democratic Club, Inc., and International  
27 Communications Association violated 52 U.S.C. § 30120 (formerly 2 U.S.C.  
28 § 441d) by failing to use proper disclaimers;  
29
- 30 4. Approve the attached Factual and Legal Analysis;  
31
- 32 5. Authorize the use of compulsory process in this matter, including the issuance of  
33 interrogatories, document subpoenas, and deposition subpoenas; and

6. Approve the appropriate letters.

3/30/15  
Date

  
Daniel A. Petalas  
Associate General Counsel  
For Enforcement

  
William Powers  
Assistant General Counsel

  
Camilla Jackson Jones  
Attorney